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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,302	03/18/2004	Stephen J. Pearson	MKL-006	5790
48490	7590	04/20/2005	EXAMINER	
MICHAEL K. LINDSEY GAVRILOVICH, DODD & LINDSEY, LLP 330 E. MAIN ST., SUITE 205 BARRINGTON, IL 60010			JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/803,302

Applicant(s)

PEARSON, STEPHEN J.

Examiner

Jerrold Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 and 16-23 is/are allowed.
- 6) ☒ Claim(s) 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leopoldi et al. US 4,375,885 in view of Lien US 6,758,338.

Leopoldi discloses a hand-operated container having a generally cylindrical shape, comprising: a top shell 11 including a substantially circular top and a substantially cylindrical upper outer sidewall extending down from the top; a bottom shell 12 including a substantially circular bottom and a substantially cylindrical lower outer sidewall extending up from the bottom, wherein the top shell and the bottom shell are mated to form an enclosure and a sidewall discharge opening 21,22 when the top and bottom shells are place in an assembled relation, the enclosure being defined by the top, the bottom and the upper and lower outer sidewalls; and a ring 13 having a ring discharge opening 24 and being adapted for rotating around the outer sidewalls when the shells are placed in the assembled relation, the ring permitting access to the enclosure when the ring is rotated to align the ring discharge opening with the sidewall discharge opening.

Leopoldi does not disclose a magnet attached to the top shell or the bottom shell.

Lien discloses in Col. 9, lines 52-65 various attachment means including a magnet disposed on the container.

It would have been obvious to one of ordinary skill in the art to modify the container of Leopoldi with the magnet as taught by Lein, so that the container could be attached to a refrigerator or other metal surface where the container could easily be located.

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Re claim 15, Leopoldi discloses a plurality of dispensable items placed in the enclosure.

2. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leopoldi et al. US 4,375,885 in view of Lien US 6,758,338, and further in view of Dalbo US 4,838,426.

Re claim 14, magnets are typically in a sheet configuration and Dalbo shows such a sheet configuration in attachment to a container.

It would have been the obvious configuration to have provided the magnet as taught by Lein to the container of Leopoldi in a sheet form as taught by Dalbo, as the sheet form is the common form for magnets, and is of a form which maximizes the surface area of the magnet, and thus the surface contact area with a metal surface such as a refrigerator. Accordingly the sheet form maximizes the securing force to that metal surface.

***Allowable Subject Matter***

Claims 1-12 and 16-23 are allowed.

The following is an examiner's statement of reasons for allowance: The teachings of Leopoldi are not sufficient to teach how a container having a top shell and bottom shell are mated together to form an enclosure could have replaced the three part

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container of Blood US 156,308. The teachings of Leopoldi would required further modification to be applied to Blood, as the ring of Leopoldi is retained by the external flanges in his invention, as well as serving to secure the top shell to the bottom shell. There is no teaching that the two shells could be attached to each other without the use of the ring. Accordingly, it would not be obvious to apply the teachings of Leopoldi to the container of Blood. The teachings of Liska US 2,774,466 or Goldstaub US 2,549,681 also could not be relied upon for the necessary teachings lacking in Leopoldi and Blood, as they are both drawn to top and bottom shells which are rotatable with respect to each other.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ

A handwritten signature in black ink, appearing to read "Mickey Yu", with a long, sweeping horizontal stroke extending to the left.

Mickey Yu  
Supervisory Patent Examiner  
Group 3728